IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9437 OF 2005

Ramkrishna Hiray .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr.N.N.Bhadrashetye for petitioner

Mr.D.A.Patil A.G.P. for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 24th February 2006.

P.C.

. This petition under Articles 226 and 227 of Constitution of India challenges an order dated 11th November 2002 which is passed by

Authorised Officer in exercise of powers conferred by section 88 of the Maharashtra Cooperative Societies Act, 1960. (the Act for short). Aggrieved by this order, the petitioner approached the Minister (appellate authority) and the appellate authority has dismissed petitioner's appeal on 20th March 2004 and further steps are initiated for recovering the amount under the order dated 11th November 2002. This order was received by the petitioner in August 2004.

2. Admittedly, the Commissioner of Sugar has, pursuant to a report received by him, initiated proceedings against the petitioner and other directors of respondent No.4 Karkhana. The notice in that behalf was issued on 1st June 2002. It is the grievance of petitioner that an enquiry was conducted on 6th and 7th June 2002 where certain questions were posed and replies were given to them by petitioner herein. The

events were recorded by petitioner by his letters dated 10th June and 29th June 2002. Said letters were replied by the Commissioner on 24th June 2002. Grievance of petitioner is that the authorised person/ Commissioner has followed a strange procedure viz., that he used to discuss the matter with each person separately and there was no enquiry as such and there is no compliance with the the Act and Rules. Ultimately, petitioner received an order communicating that he along with other directors (11) are responsible for loss of Rs.1,33,64,215/- along with interest with effect from 5th June 2002. It is this order which was the subject matter of appeal before the appellate authority and the same was dismissed by the order referred to above.

3. Mr.Bhadrashetye has invited my attention to section 88 of the Act. That is a power of Registrar to assess damages against the

delinquent promotors. It is upon a clear satisfaction of the Registrar that it is necessary to recover, by requiring the person proceeded against, to repay or restore any money or property with interest or to contribute such sum to the assets of society by way of compensation. This is if the Registrar is satisfied that there is any misappropriation, retention, misfeasance or breach of trust. This section, is applicable notwithstanding any criminal proceedings against the person proceeded against by the Registrar. From a bare reading of this provision as also Rule 72 which guides the exercise of the same, it is clear that the report which is forwarded to the Registrar firstly, confers a discretion upon him to make further enquiies and on completion of further enquiries under Rule 72(1) a notice being issued to the person concerned, furnishing him with particulars of acts of omission and commission and giving him time to put in written statement of defence

within 15 days fom the date of issue of such notice. Thereafter, if the Registrar is not satisfied with the explanation or the written defence and is of the opinion that there are reasonable grounds for holding a person liable, there is a power to frame charges. It is after that stage viz., framing charges that once again an opportunity, to put in defence and indicate documentary or oral evidence, has to be afforded. These are the stages which are set out before making of a final order.

4. From a reading of impugned order passed by the authorised person/ Registrar, it does not appear to me that this procedure has been followed. Therefore, by mere question and answer session, it is not as if the person concerned has admitted that he is guilty of certain acts of omission and commission and, therefore, final orders be passed against him. The appellate authority was obliged to set aside such an order

for non compliance with the procedure prescribed. The appellate authority having failed to set right the obvious error, it is the plain duty of this Court to interfere and quash and set aside both orders.

5. In the circumstances, the order passed on 11th November 2002 as well as of the Minister dated 20th March 2004 and all consequential directions and steps pursuant thereto stand quashed and set aside. The matter now stands restored to the file of Registrar who shall proceed with it in accordance with the mandate of Section 88 read with Rule 72 of the Rules and after due compliance thereof and hearing petitioner, pass appropriate orders in accordance with the law. Needless to state that impugned order has been passed against the petitioner and 11 other persons. However, this petition is filed only by the Managing Director i.e. the petitioner before me In these circumstances,

benefit of this order would be available only to the petitioner herein.

(S.C.DHARMADHIKARI, J)